

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

FERNANDO NUNEZ, JR.,)	Civil Action No. 3:18-cv-165
)	
Plaintiff,)	District Judge Kim R. Gibson
)	Magistrate Judge Lisa Pupo Lenihan
v.)	
)	
MARK BORSTNAR,)	ECF Nos. 20, 47, 51 & 53
RYAN WHITACRE,)	
KEVIN TURNER,)	
)	
Defendants.)	

MEMORANDUM ORDER

This civil action was commenced in the Court of Common Pleas of Somerset County and was removed to this Court on August 22, 2018. *See* Notice of Removal and Attachments at ECF No. 1. The case was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. §636(b)(1), and Local Rules of Court 72.C and 72.D.

The Magistrate Judge's Report and Recommendation (ECF No. 60), filed on September 12, 2019, recommended that the Motion to Dismiss/Motion for Summary Judgment on the issue of exhaustion of administrative remedies filed by Defendants Mark Borstnar, Ryan Whitacre, and Kevin Turner be denied. It was further recommended that that the Motion to Join Defendants and Additional Claims (ECF No. 47), Motion to Compel Limited Discovery (ECF No. 51) and Motion for Leave to Amend (ECF No. 53) filed by Plaintiff Fernando Nunez, Jr. be granted. The parties were informed that in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.D.2 of the Local Rules of Court, that they had fourteen (14) days to file any objections, and that unregistered ECF users were given an additional three (3) days pursuant to Federal Rule of Civil Procedure 6(d). Objections for registered ECF users were

due by September 26, 2019. Objections for unregistered ECF Users were due by September 30, 2019. (ECF No. 30.) No objections have been filed.

After review of the pleadings, documents in the case, together with the Report and Recommendation, the following Order is entered:

AND NOW, this 13th day of September, 2019,

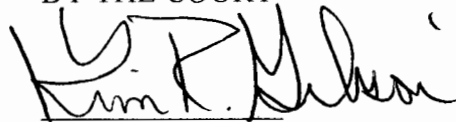
IT IS HEREBY ORDERED that the Motion to Dismiss/ Motion for Summary Judgment on the issue of exhaustion of administrative remedies filed by Defendants Mark Borstnar, Ryan Whitacre, and Kevin Turner is **DENIED**.

IT IS FURTHER ORDERED that the Motion for Leave to Amend (ECF No. 53) and Motion to Join Defendants and Additional Claims (ECF No. 47) filed by Plaintiff Fernando Nunez, Jr. is **GRANTED**. The **CLERK OF COURT IS ORDERED** to docket the Second Amended Complaint at ECF No. 53-1.

IT IS FURTHER ORDERED that Motion to Compel Limited Discovery (ECF No. 51) is **GRANTED**. Defendants are **ORDERED TO PROVIDE** to Plaintiff his ICARs (Inmate Cumulative Adjustment Records) from September 1, 2018 through December 31, 2018.

IT IS FURTHER ORDERED that the Report and Recommendation (ECF No. 60) of Magistrate Judge Lenihan, dated September 12, 2019, is adopted as the Opinion of the Court.

BY THE COURT

A handwritten signature in black ink, appearing to read 'Kim R. Gibson', written over a horizontal line.

Kim R. Gibson
UNITED STATES DISTRICT JUDGE

cc: Fernando Nunez, Jr.
FM-8959
SCI Mahanoy
301 Morea Road
Frackville, PA 17932